

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

In re:

THE DIOCESE OF ROCHESTER,  
  
Debtor.

Bankruptcy Court Main Case  
No. 2-19-20905-PRW  
Chapter 11

THE CONTINENTAL INSURANCE  
COMPANY, successor by merger to  
Commercial Insurance Company of  
Newark, New Jersey, and Firemen's  
Insurance Company of Newark, New  
Jersey,

Plaintiff-Appellant,

v.

THE DIOCESE OF ROCHESTER,  
  
Defendant-Appellee,

and

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS,

Intervenor-Appellee.

**District Court Case No. 6:24-cv-  
06621-CJS**

Bankruptcy Court Adv. Proc.  
No. 2-23-02014-PRW

**APPELLEES' JOINT RESPONSE TO  
APPELLANT'S SUBMISSION OF ADDITIONAL AUTHORITY**

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Appellees The Diocese of Rochester (the “**Diocese**”) and the Official Committee of Unsecured Creditors of the Diocese of Rochester (the “**Committee**”) submit this response to Appellant Continental Insurance Company’s (“**CNA**”) submission of additional authority (Docket No. 16) asserting that the decision of Northern District of Illinois in *In re H&H Fast Properties, Inc.* (Exhibit A to Appellant’s submission) supports Appellant’s position that a debtor is bound by an unsigned settlement agreement regardless of bankruptcy court approval of that settlement agreement.

*H&H* does not alter the fundamental requirement that a transaction outside of the “ordinary course of business” cannot be binding on a debtor until approved by the Court. *Motorola, Inc. v. Off. Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007).

*H&H* relies on the reasoning of *Liberty Towers*<sup>1</sup> to find that where the debtor *withdrew* a 9019 Motion without disclosing good cause, the debtor could not then argue that the agreement was unenforceable because it had not been approved by the bankruptcy court. *H&H*, slip op. at 5-9.

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<sup>1</sup> *Liberty Towers Realty, LLC v. Richmond Liberty, LLC*, 569 B.R. 534, 542-43 (E.D.N.Y. 2017), *aff’d*, 734 F. App’x 68 (2d Cir. 2018) (holding where an agreement is no longer in the best interests of the estate, the debtor may oppose approval of a 9019 Motion).

The analysis in *H&H* does not apply here. *First*, the Diocese did not withdraw the 9019 Motion – a key factor in the court’s reasoning in *H&H*. *Id.* at 9.

*Second*, unlike *H&H*, the Bankruptcy Court determined, after trial and applying the Second Circuit’s *Winston* four-factor analysis, that the proposed settlement CNA agreement was not an enforceable agreement. AA0872-77.

*Third*, the Diocese had ample cause not to enter into the proposed settlement agreement with CNA without Bankruptcy Court approval. The Bankruptcy Court made clear to the Diocese that no plan of reorganization could be confirmed over the Committee’s objection and, given the Committee’s strong objection, the proposed CNA settlement (which could not have been final and consummated until the Settlement Agreement Effective Date occurred) would never have come to fruition. *See Appellees’ Joint Responding Brief* (Docket No. 14) at 7, 15-16, 21-22.

*H&H Fast Properties* is simply not relevant to the issues here.

Dated: June 30, 2025

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